Appln No.: 10/009,874
Amendment Dated: August 10, 2005
Reply to Office Action of May 25, 2005

REMARKS/ARGUMENTS

The claims of this application were amended in reliance on the previous indication that the claims now pending were allowable to facilitate prosecution. The Examiner has now imposed new rejections with respect to these claims. Accordingly, Applicants have amended the application to add back in the claims based on those previously canceled. No new matter has been added, and no fees are believed to be due. However, any fees deemed to be due for additional claims may be charged to Deposit Account No. 15-0610.

Claim 46 has been amended to refer to a "A protein." This amendment is believed to overcome the rejection under 35 USC § 112, second paragraph.

Claim 46 is rejected as anticipated by Cerritelli et al. The Examiner now asserts that claim 46 reads on any protein produced by any cell infected with T4 bacteriophage. Claim 46 has been amended to specify that the heterologous promoter is not a bacteriophage promoter. Combined with the requirement that the nucleic acid is "purified" prior to introduction to the host cell, this clearly excludes a protein that is merely produced by a cell infected with T4.

During a telephone conversation with the Examiner prior to the issuance of this latest Official Action several amendment were proposed and approved to claim 46. The examiner has not issued an Interview Summary or otherwise acknowledged this conversation, and he has not repeated any requirement for the amendment. Thus, it is understood that the amendment is no longer deemed necessary.

The Examiner rejected claims 49-50 under 35 USC § 103(a) as obvious over Cerritelli and Huynh. The Examiner states that using the apparatus of Huynh to purify gp35 would result in a purified protein that is not in a gel, and that this would have been obvious and that one would have been motivated to do so to obtain a highly purified protein preparation. The Examiner's argument, however, is merely that a method for achieving the purified protein may have been known. The claims, however, are not directed to a method of obtaining a highly purified protein, but to the protein as obtained, and it is this protein that must be shown to be obvious. Here, the Examiner has not shown anything about the properties of the protein outside of a gel, or why Certelli would make such a protein desirable. The gel purification in Certelli is merely an analytical tool used to satisfy academic curiosity, and no use for isolated gp35 is disclosed. Thus,

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there is no motivation in the art to make highly purified gp35 outside of a gel, even if the means to do so may have existed.

Respectfully submitted,

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